THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1432 of 2001.
(Old FAFO No. 848 of 1995)

1. Officer Commanding, 21, B.R.T.F. Marwari
   C/) 56 A.P.O.
2. Officer Commanding, 66, R.C.C.(GREF)
   C/O 56 A.P.O.
3. Officer Commanding, Deepak Project (GREF)
   C/O 56 A.P.O.

… **Appellants.**

Vs.

Smt. Deeka Devi alias Bhaguli Devi, W/O late Diwani Lal,
Resident of village Tiladi, Patwari Kshetra Tiladi,
Tehsil Rudraprayag, District Chamoli.

…**Respondents.**

Sri Deepak Rawat, Adv., A.S.C. (Central Govt), learned counsel for the appellants.
None appeared for the respondent.

Date June 07, 2006
P.C.: Hon'ble B.S.Verma, J.

The present appeal under Section 30 of the Workmen's Compensation Act (***hereinafter referred to as the Act***), is directed against the judgment and award dated 4-7-1995 passed by the then Workmen's Compensation Commissioner Chamoli (***for short the Commissioner***) in W.C. Case No. 03 of 1992-93, Smt. Deeka Devi Vs. Commanding Officer and others, whereby the compensation of Rs. 41,121/- was awarded in favour of the claimant payable by the Commanding Officer 21 BRTF-appellant no.1 within a period of one month as mentioned in the impugned order.

The relevant facts necessary for a just decision of the appeal are that the deceased Diwani Lal was a workman under the employment of the opposite-parties (GREF) as labour from the year 1964. In the course of employment, he fell ill in the year 1991 and was admitted in the GREF hospital Joshimath. The workman was discharged from the hospital in the ailing condition and he died on 20-6-1991 soon after he reached his house. It is alleged that he was

aged 42 years and getting Rs. 1,000/- as his monthly wages from the employer, therefore, the widow of the deceased workman filed claim petition under the Act from the opposite parties, who are the authorities of the employer department.

Notices were issued to the opposite parties. The employer-authorities in their written statements admitted all the allegations except that the workman suffered serious ailment and died as a result of the same in the course of his employment as well as that the ailment of the workman had any nexus with the job assigned to him. They also resisted the contention that the workman was discharged from the hospital by the employer-authorities. The learned Commissioner framed necessary issues in the case, recorded the evidence led by the parties in support of their rival contentions and after hearing both the parties and perusing the evidence, the learned Commissioner came to the conclusion that that the deceased workman suffered injury in the course of his employment on 9-3-1991 with the result he was taken to GREF hospital Joshimath for treatment and thereafter, he died. He accordingly inferred that the case of the deceased was fully covered under the provisions of the said Act. From the evidence on record, the learned Commissioner found that the deceased was being given treatment by the employer and accordingly decided the issue in favour of the claimant and, ultimately, relying upon the documentary evidence led by the employer-appellants regarding the wages of the deceased @ Rs.710/- per month, the learned Commissioner awarded compensation of Rs. 48,121/- in favour of the claimant and directed the employer-appellant no.1 to pay the compensation within a period of one month.

At the outset, it may be mentioned that an appeal under Section 30 of the said Act is maintainable if any substantial question of law for determination by the Court is involved in the matter. In the case at hand, all the grounds taken by the appellant-employer are fully concluded by the finding of fact recorded by the

learned Commissioner. It is open to the Court to re-appraise the evidence and arrive at a different conclusion unless it is shown that the impugned judgment and award suffers from illegality and perversity or that any manifest error of law was committed by the learned Commissioner.

I have heard learned counsel for both the parties and perused the material on record.

Having considered the entire grounds taken in the memo of appeal, though there is no apparent substantial question of law involved in the present case, but from a very remote consideration the only point is whether the provisions of Act were applicable or not.

As already detailed above, the learned Commissioner has recorded a finding of fact that the workman suffered injury while lifting stones on 9-3-1991 in the course of his employment, which was fully proved on the basis of the stand taken by the employer-appellants in their written statement as well as the testimony of the P.W.2, Surendra Lal, who was a colleague of the deceased and an employee of the appellants. This finding of fact is fully supported by the evidence on record. I do not find any merit in the contention raised by the appellants before this Court in appeal. The point is answered against the appellants.

Having considered the material on record and the impugned judgment and award of the learned Commissioner, I find no merit in the appeal, which must fail.

The appeal preferred by the employer-appellants is hereby dismissed. The judgment and order, under appeal, is upheld. No order as to costs.

The interim order dated 7-9-1995 is hereby vacated. The amount in deposit with the learned Workman Compensation Commissioner Chamoli be released in favour of the claimant-respondent.

(B.S.Verma,J.)

RCP